



October 8, 2020

EX PARTE NOTICE VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation
Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service, RM-11768

Dear Ms. Dortch,

This letter responds to recent filings from Space Exploration Holdings, LLC (“SpaceX”) regarding the 12.2-12.7 GHz band (“12 GHz Band”).¹ SpaceX continues to repeat inaccurate claims as it opposes any Notice of Proposed Rulemaking (“NPRM”) to consider optimizing this unique band for next-generation services. Accepting SpaceX’s plea for inaction in the 12 GHz Band would squander a prime opportunity to advance US 5G leadership and would stunt commercial 5G mobile broadband deployment for years to come. The Commission has no other spectrum band in inventory: (a) between 6 GHz and 24 GHz; (b) already allocated for terrestrial use; (c) comprising 500 megahertz of nationwide, contiguous spectrum; (d) offering the possibility of 100 megahertz channels with radically superior propagation compared to higher frequency spectrum such as 24 GHz; and (e) free of military and other federal users. That is why virtually every commenter except for SpaceX supports exploring how best to maximize the 12 GHz Band opportunity.

Several key flaws undermine SpaceX’s arguments:

- Instead of offering a constructive path to examine whether the 12 GHz Band could support US 5G leadership, SpaceX would have the Commission do nothing. SpaceX justifies this obstinacy by invoking its purported reliance interests in the band. However, SpaceX’s 2018 NGSO authorization was conditioned on both co-primary status with other applications (Multichannel Video and Data Distribution Service (“MVDDS”) and Direct Broadcast

¹ See Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768 (filed Aug. 6, 2020); Letter from Paul Caritj, Counsel to SpaceX, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768 (filed July 31, 2020); see also Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768 (filed July 22, 2020).

Satellite (“DBS”)); and future rule changes that might limit Non-Geostationary Orbit Satellite (“NGSO”) applications in the band.²

- SpaceX misleadingly conflates the 2016 Petition with the urgent need for an NPRM to evaluate the unique 5G opportunity in the band. In doing so, SpaceX ignores the outpouring of recent support for an NPRM³ and evidence that coexistence is more feasible today than it was four years ago.
- SpaceX presents the Commission with a false choice: either (1) limit an NPRM to just the language of the 2016 Petition based on the technological environment of the time, or (2) do nothing. Parties petitioning a federal agency for rulemaking are not required to refile petitions in each instance of changes in information presented in the record.⁴ Nor is the FCC limited in how it may initiate a rulemaking. The Commission may (a) use a petition as the sole basis to issue an NPRM; (b) supplement a petition with additional information, including information in the record, to initiate an NPRM; or (c) issue an NPRM on its own motion absent a petition.⁵ The record before the Commission establishes the growing demand for 5G spectrum and the technological feasibility of developing the existing

² See *Space Exploration Holdings, LLC Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System, et al.*, Memorandum Opinion, Order and Authorization, 33 FCC Rcd 3391, ¶ 40(e) (2018) (“SpaceX Authorization”) (“Operations in the 12.2-12.7 GHz (space-to-Earth) frequency band are authorized up to the power flux-density limits in 47 CFR § 25.208(o) and Article 21 of the ITU Radio Regulations, and up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations, as well as Resolution 76 (Rev. WRC-15) of the ITU Radio Regulations.”); *id.* at ¶ 40(r) (“This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, any investments made toward operations in the bands authorized in this order by SpaceX in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions”); *id.* at n.88 (“The MVDDS 5G Coalition expresses concerns regarding protection of current and potential future MVDDS operations in the 12.2-12.7 GHz band. . . . Such concerns are addressed in paragraphs 40(e) and 40(r) below, requiring SpaceX to comply with established pfd limits in this band and subjecting the authorization to modification to conform it to any future rules or policies adopted by the Commission in pending rulemaking proceedings.”).

³ See Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (Apr. 26, 2016) (“Petition”); see also Letter from Go Long Wireless, Ltd., Cass Cable TV, Inc., Story Communications, LLC, and Vision Broadband, LLC to Marlene Dortch, Secretary, FCC, RM-11768 et al. (filed Aug. 14, 2020); Martha Suarez, Dynamic Spectrum Alliance, to Marlene Dortch, Secretary, FCC, RM-11768 et al. (filed Aug. 21, 2020); Letter from Alexi Maltas, Competitive Carriers Association, to Marlene Dortch, Secretary, FCC, RM-11768 et al. (filed July 21, 2020); Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768 (filed June 15, 2020); Letter from V. Noah Campbell, RS Access, LLC, to Marlene Dortch, Secretary, FCC, RM-11768 et al. (filed June 11, 2020); Letter from Harold Feld, Public Knowledge and Michael Calabrese, Open Technology Institute at New America to Marlene H. Dortch, FCC, RM-11768 (filed July 9, 2020). See generally MVDDS 5G Coalition, Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service, Docket No. RM-11768 (filed Apr. 26, 2016).

⁴ See *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (quoting *United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1225 (D.C. Cir.1980)); see also *id.* (“[A]n agency must be able to respond flexibly to comments and need not provide a new round of notice and comment every time it modifies a proposed rule.”).

⁵ See 47 C.F.R. § 1.411 (“Rulemaking proceedings are commenced by the Commission, either on its own motion or on the basis of a petition for rulemaking.”).

terrestrial licenses in the 12 GHz Band to support 5G. SpaceX would have the Commission ignore the record, ignore the demand for 5G spectrum, ignore the technological feasibility of using the 12 GHz Band for 5G, ignore developments in spectrum sharing, ignore the very language of SpaceX's 12 GHz spectrum authorization, and ignore the broad authority the Commission has to initiate an NPRM.

SpaceX falsely suggests that satellite-terrestrial sharing technologies have been frozen in time since the Petition was filed in 2016. SpaceX provides no evidence to substantiate these claims. In contrast, several radio-engineering organizations have recently concluded “that there are no technical obstacles to sharing the 12 GHz band between the [DBS], [NGSO] fixed satellite services, and fixed and mobile 5G wireless broadband services.”⁶

Disagreement on the feasibility of sharing is no reason to withhold an NPRM—to the contrary, rulemakings exist precisely to adjudicate the merits of competing technical claims. The notice-and-comment process allows interested parties and the public to help guide Commission decision-making to further US policy imperatives. Any rulemaking should be expected to revisit with fresh eyes the twenty-year-old MVDDS service rules, the rapid improvements in spectrum sharing, the US 5G leadership imperative, and the completely unique nature of this spectrum.

Nor can SpaceX invoke its “investment-backed expectations” to defeat a rulemaking. How much SpaceX has spent on equipment or user terminals is irrelevant. SpaceX knew before investing that its access to the 12 GHz Band could change pending resolution of the Petition. In fact, the Petition was filed more than two years before SpaceX received its first authorization. SpaceX's claim that its authorization is not conditioned on future rulemaking in the 12 GHz Band is wrong,⁷ and its insistence that the condition only applies to OneWeb (and no other entity) is false.⁸ While SpaceX is free to disregard the Commission's disclaimers and invest considerable sums of money in the 12 GHz Band, the company should not be shielded from the reasonably foreseeable consequences that parties have brought to SpaceX's attention for many years. Allowing such brazen gamesmanship would create bad incentives and encourage incumbents to frustrate future spectrum repurposing efforts.

⁶ See Letter from Martha Suarez, President, Dynamic Spectrum Alliance, to Marlene Dortch, Secretary, FCC, RM-11768, at 2 (filed Aug. 21, 2020); Letter from Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 1 (filed June 15, 2020).

⁷ SpaceX was specifically warned many years before engineering their system that any planned dependence on access to the 12 GHz Band would be undertaken at their own risk. See Letter from V. Noah Campbell, CEO, RS Access, LLC, to Marlene H. Dortch, Secretary, FCC, Docket No. RM-11768, at 4 (filed Aug. 6, 2020).

⁸ SpaceX Authorization, ¶¶ 40(e), 40(r), & n.88. Regardless, the Commission has total authority to make changes to existing licenses based on section 316 of the Communications Act. 47 U.S.C. § 316(a) (“Any station license or construction permit may be modified by the Commission . . . if in the judgment of the Commission such action will promote the public interest, convenience, and necessity . . .”).

The best way for the Commission to determine how the 12 GHz Band should be used going forward is to initiate an NPRM so that all interested parties may contribute to the record through an open and transparent process. The sooner the Commission does so, the easier it will be for parties to have much needed certainty in deploying new and innovative services in the band, benefiting consumers, supporting job growth and maintaining US leadership in 5G.⁹

Sincerely,

/s/ V. Noah Campbell

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⁹ In addition, SpaceX continues to claim falsely that MVDDS licensees have provided no meaningful connectivity solutions in the band. In fact, RS Access built and operates hundreds of MVDDS systems across sixty markets, as demonstrated over a year ago in a public filing. Unlike NGSO authorizations, which have no substantial service commitments, the terrestrial MVVDS licenses have a substantial service requirement with an associated safe harbor. RSA certified a showing with the FCC that far exceeded this safe harbor requirement ahead of the deadline in July 2019. *See, e.g.*, License, RSA, ULS Call Sign WQAR560 (granted Jan. 26, 2015).